

March 15, 1999

Charles J. Mazursky, Esq.

Mazursky, Schwartz & Angelo

10990 Wilshire Boulevard, Suite 1200

Los Angeles, CA 90024-3927

Dear Mr. Mazursky:

On October 28, 1998, your client (b)6, filed a request under the Freedom of Information Act (FOIA). She requested "all documentation pertaining to an anonymous letter dated February 18, 1998 and all subsequent correspondence and reports submitted to your office [NCUA's Region VI] from Pacific Transportation FCU (PTFCU), CPA Mike Richards, or other third parties representing PTFCU." On November 25, 1998, NCUA's Region VI Director denied (b)6 request. The records were withheld pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). You sent your January 28, 1999 appeal to NCUA's Region VI office. We received your appeal on February 12. Your appeal is granted in part and denied in part. The anonymous letter is released with redactions. The redacted portions are withheld pursuant to exemptions 6 and 7(C) of the FOIA. All other records continue to be withheld pursuant to exemption 8. The two exemptions and their applicability to the records requested are discussed below.

Exemptions 6 and 7(C)

Exemption 6 of the FOIA protects information about an individual in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6). Exemption 7(C) is the counterpart to exemption 6 for law enforcement cases. The privacy standard for withholding information is easier to reach under exemption 7(C) because it protects information that "could reasonably be expected to constitute an unwarranted invasion of person privacy." We believe that information withheld meets the more difficult standards to withhold under exemption 6.

The courts have held that all information which applies to a particular individual meets the threshold requirement for exemption 6 protection. United States Department of State v. Washington Post Co., 456 U.S. 595 (1982). Once a privacy interest is established, application of exemption 6 requires a balancing of the public's right to disclosure against the individual's right to privacy. Department of the Air Force v. Rose, 425 U.S. 352,372 (1976).

The anonymous letter contains allegations about your client (b)6, as well as information about other individuals. The information about (b)6 is not subject to exemptions 6 or 7(C), since she is the requester. Information about (b)6 is released to you as her representative. It would not be released to any other FOIA requester. Personal information about other individuals (including allegations of negative job performance and information that may help to identify the author of the letter) is redacted. The Supreme Court has held that the public interest in exemption 6

information is to "shed light on an agency's performance of its statutory duties." United States Department of Justice v. Reporters Committee, 489 U.S. 749 (1989). The burden of establishing that disclosure would serve the public interest is on the requester. No information regarding public interest was submitted with either (b)6 initial FOIA request or your appeal. We believe there is minimal, if any, public interest in disclosing the personal information about individuals other than (b)6. The individuals' privacy interests clearly outweigh any public interest in disclosure. The anonymous letter, with redactions, is enclosed.

Exemption 8

Exemption 8 of the FOIA (5 U.S.C. 552(b)(8)) exempts information:

contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

The courts have discerned two major purposes for exemption 8 from its legislative history: 1) to protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank's stability; and 2) to promote cooperation and communication between employees and examiners. *See Atkinson v. FDIC*, 1 GDS 80,034, at 80,102 (D.D.C. 1980). Either purpose is sufficient reason to withhold an examination report.

NCUA has incorporated these dual purposes into its regulation. Section 792.11(a)(8) of the NCUA Regulations implements exemption 8 and adds the following:

This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

Courts have interpreted exemption 8 broadly. NCUA is not required to segregate and disclose portions of documents unrelated to the condition of the credit union. *See Atkinson*.

The records withheld pursuant to exemption 8 include an investigation report done in response to the anonymous complaint discussed above and several pieces of correspondence (internal memoranda and letters) relating to that investigation. The investigation report itself fits squarely within the language of exemption 8. Its release could reasonably harm the financial security of PFCU and interfere with the relationship between PFCU and NCUA. Courts have held that documents related to reports withheld under exemption 8 may also be exempt from disclosure.

Documents concerning a report's follow-up as well as internal memoranda that contain specific information about named financial institutions can be withheld pursuant to exemption 8. *See Atkinson and Wachtel v. Office of Thrift Supervision*, No. 3-90-833 (M.D. Tenn. Nov. 20, 1990). Hence, the correspondence continues to be withheld pursuant to exemption 8.

Pursuant to 5 U.S.C. 552(a)(4)(B), you may seek judicial review of this determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court in the district where the requester resides, where the requester's principle place of business is located, the District of Columbia, or where the documents are located (the Eastern District of Virginia).

Sincerely,

Robert M. Fenner

General Counsel

GC/HMU:bhs

99-0232

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Enclosure

cc: Region VI Director